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In the Supreme Court of the United States

OCTOBER TERM, 1984

HEIGHTS COMMUNITY CONGRESS, PETITIONER

v.

VETERANS ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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11 pp

TABLE OF AUTHORITIES

Page

Cases:

AFGE, Local 1923 v. *Dep't of Health and Human Services*, 712 F.2d 931 5

Arieff v. *Dep't of the Navy*, 712 F.2d 1462 6-7

Church of Scientology v. *Dep't of the Army*, 611 F.2d 738 5

Dep't of State v. *Washington Post Co.*, 456 U.S. 595 5

Dep't of the Air Force v. *Rose*, 425 U.S. 352 ..... 3, 4, 6, 7

Ditlow v. *Shultz*, 517 F.2d 166 8

Getman v. *NLRB*, 450 F.2d 670 ..... 5, 7, 8

Minnis v. *Dep't of Agriculture*, 737 F.2d 784 ..... 5, 6

Rowan v. *Post Office*, 397 U.S. 728 ..... 3, 4

Wine Hobby USA, Inc. v. *IRS*, 502 F.2d 133 ..... 5, 6

Statutes and regulation:

Freedom of Information Act, 5 U.S.C. 552 1

5 U.S.C. 552(b)(6) 1, 2, 4, 5

38 U.S.C. 3301(a) 6

38 C.F.R. :

Section 1.512(b) 6
Section 1.512(b)(1) 5

Page

Miscellaneous:

46 Fed. Reg. 45786 (1981) 6

U.S. Dep't of Justice, *Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act* (1967) 4

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Petitioner contends that the court of appeals erred in affirming the decision of the district court that disclosure of the property address, loan amount, and identity of lenders of loans to veterans insured by the Veterans Administration in Cleveland Heights, Ohio would result in a "clearly unwarranted invasion of personal privacy" and that the information was thus protected from disclosure by Exemption 6 of the Freedom of Information Act, 5 U.S.C. 552(b)(6).

1. Petitioner Heights Community Congress (HCC) filed a request for information with the Veterans Administration (VA) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Its initial request on October 25, 1979, sought "the total number of VA insured loans granted in Cleveland Heights, Ohio by census tract and/or zip code, as well as by race, for the years 1976, 1977 and 1978" (Pet. App. 11a).

About three months later, the time for response having expired, petitioner filed suit in the United States District Court for the Northern District of Ohio to compel disclosure by the VA (*id.* at 14a). On March 28, 1980, the VA released the requested information to petitioner, organized by zip code (*ibid.*).

On May 21, 1980, petitioner submitted a second FOIA request. This time, petitioner sought individual veterans' "Residential Appraisal Form 26-1803 and Certificate of Reasonable Value Form 26-1805 for each loan granted in Cleveland Heights for the years 1975-1979" (Pet. App. 15a). Petitioner's stated purpose for requesting the information was to determine whether lenders and realtors were involved in racial steering in connection with the VA loan program (*id.* at 2a). The VA granted the request, subject to redaction of the veterans' names, social security numbers, property addresses, and loan amounts, and the lenders' identification numbers (*id.* at 2a, 16a). After this action was upheld on administrative appeal, petitioner amended its complaint to compel disclosure of the redacted information (*id.* at 16a).

In district court, petitioner abandoned the request for the names and social security numbers of the veterans who received loans, but persisted in the claim for the remaining information on the forms. On cross-motions for summary judgment, the district court held that the VA properly withheld the omitted information because disclosure would constitute a "clearly unwarranted invasion of personal privacy" under Exemption 6 of the FOIA, 5 U.S.C. 552(b)(6) (Pet. App. 16a n.5, 19a-21a). The district court found that the information already released by the VA was sufficient to show the absence of discrimination against minority veterans and that the redacted forms already released could be used to determine whether the VA loan program had been "manipulated" (*id.* at 20a, 21a). It concluded that "[w]hen statistical data will serve the purpose of

the inquirer, the release of unnecessary information that would invade an individual's right to privacy is clearly unwarranted" (*id.* at 21a).

2. The court of appeals affirmed (Pet. App. 1a-9a), applying the balancing test enunciated by this Court in *Dep't of the Air Force* v. *Rose*, 425 U.S. 352 (1976).

The court of appeals recognized the important privacy interest in a person's home address (Pet. App. 6a), relying on *Rowan* v. *Post Office*, 397 U.S. 728, 737 (1970). It affirmed the district court's factual findings "that the addresses, loan amounts and lender identifications were 'surplussage' [*sic*]" and that petitioner's research objectives could be satisfied on the basis of the information already released by the VA (Pet. App. 7a). Finally, the court of appeals concluded that disclosure of the withheld information "would subject a veteran, who is himself not suspected of any wrongdoing, to involuntary personal involvement in [petitioner's] investigation of steering" (*id.* at 7a-8a). Even if petitioner did not do so, the court noted that realtors or lenders might (*id.* at 8a). In sum, the court of appeals determined that the district court's conclusion that the withheld information was protected by the privacy exemption was not clearly erroneous (*ibid.*).[1]

3. The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. As petitioner recognizes (Pet. 8), this case involves no more than the application of settled legal principles to a particular set of facts, *i.e.*, whether disclosure of

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[1]Judge Edwards concurred in part and dissented in part (Pet. App. 9a). He agreed that release of the names and addresses of the veterans would invade their personal privacy (*ibid.*). However, he would have remanded to require the VA to cooperate with petitioner by providing sufficient identifying information on lenders and loan amounts to allow a "spot check" on their activities (*ibid.*).

certain personal information concerning veterans and their VA loans would constitute a clearly unwarranted invasion of personal privacy, within the meaning of Exemption 6 of the FOIA, 5 U.S.C. 552(b)(6). The court of appeals' determination, on the record, that the district court's conclusion was not clearly erroneous does not warrant further review.

a. Petitioner claims (Pet. 16-21) that the court of appeals "exaggerated" the invasion of privacy entailed by release of the veterans' home addresses. However, an individual's address is well-recognized as an identifying item of information. As the court of appeals observed (Pet. App. 6a), many persons take steps to protect their addresses from public disclosure. In another context, this Court noted the important and substantial privacy interest that ordinary citizens have in their names and homes:

> the right of every person "to be let alone" must be placed in the scales with the right of others to communicate.
>
> * * * * *
>
> The ancient concept that "a man's home is his castle" into which "not even the king may enter" has lost none of its vitality * * *.

Rowan v. *Post Office*, 397 U.S. at 736, 737. Cf. *Dep't of the Air Force* v. *Rose*, 425 U.S. at 380-381 (approving the deletion of personal references and other identifying information before release of cadet disciplinary summaries).

Indeed, the privacy of home addresses was a matter of particular concern at the time Exemption 6 was enacted. See U.S. Dep't of Justice, *Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act* 36-37 (1967). Accordingly, other courts of appeals have similarly protected the names and addresses of ordinary individuals from disclosure, pursuant to

petition for cert. pending, No. 84-663 (filed Oct. 15, 1984)

Exemption 6. See *Minnis* v. *Dep't of Agriculture*, 737 F.2d 784, 787 (9th Cir. 1984); *AFGE, Local 1923* v. *Dep't of Health and Human Services*, 712 F.2d 931, 932 (4th Cir. 1983); *Church of Scientology* v. *Dep't of the Army*, 611 F.2d 738, 747-749 (9th Cir. 1979); *Wine Hobby USA, Inc.* v. *IRS*, 502 F.2d 133, 137 (3d Cir. 1974).[2]

Merely because the names, addresses, and lenders' names are matters of public record — at the county recorder's office — does not, as petitioner contends (Pet. 20-21), make the application of Exemption 6 to this information "questionable." This Court has stated that the "public nature of information may be a reason to conclude, under all the circumstances of a given case, that the release of * * * information would not constitute a 'clearly unwarranted invasion of personal privacy.' " *Dep't of State* v. *Washington Post Co.*, 456 U.S. 595, 603 n.5 (1982) (quoting 5 U.S.C. 552(b)(6)). It also made clear that this factor "cannot be decisive." 456 U.S. 603 n.5. Here, both the district court and the court of appeals concluded, based on all the circumstances of the case, that disclosure of the veterans' addresses would in fact constitute a clearly unwarranted invasion of personal privacy. In reaching that conclusion, the courts committed no legal error.

Petitioner's reliance (Pet. 18) upon a VA regulation, 38 C.F.R. 1.512(b)(1), to support disclosure is misplaced. The regulation provides that "the address of the property being appraised or inspected shall not be considered an individual identifier." This provision deals with the typical situation where an appraisal form or certificate of value is sought for

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[2]There is no unresolved conflict with *Getman* v. *NLRB*, 450 F.2d 670 (D.C. Cir. 1971), on this point (see Pet. 18-19). To be sure, the court of appeals held in *Getman* that Exemption 6 was intended to protect primarily intimate details of a personal nature. 450 F.2d at 675. That position was rejected by this Court in *Dep't of State* v. *Washington Post Co.*, 456 U.S. 595, 600 (1982).

a particular property; in such an instance, no information is revealed about an individual veteran. But where, as here, the disclosure request is framed in terms of loans actually granted to veterans (see page 2, *supra*), the effect of disclosing the property addresses would be to provide a list of home addresses of all recent veteran-purchasers in the area, in violation of the general principle that appraisal reports and certificates of value may be disclosed "provided the veteran-purchaser's name *and address* are deleted before release to any person not a party to the related transaction." 46 Fed. Reg. 45786 (1981) (emphasis added); see 38 U.S.C. 3301(a).[3]

b. Petitioner also contends (Pet. 11) that the privacy invasions identified by the courts below are "speculative" and "secondary" — that they rely on a "hypothesized * * * chain of events which might eventually result in an invasion of the veterans' privacy." However, petitioner neglects to point out that the courts below held (Pet. App. 6a, 19a-20a) that disclosure of the veterans' home addresses, in and of itself, would constitute an invasion of privacy; speculation is not involved. See also, *e.g., Minnis, supra; Wine Hobby, supra.*

There is no conflict between the decision below and *Rose, supra,* or *Arieff* v. *Dep't of the Navy,* 712 F.2d 1462 (D.C.

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[3]This interpretation is consistent both with the purpose of disclosure under 38 C.F.R. 1.512(b) and with protecting against unwarranted personal disclosures. When the appraisal report and certificate of value are first prepared with respect to a property, no single, specific purchaser is necessarily involved. The information may be of use to many potential purchasers and lenders. That is why disclosure of the forms, including the address of the property, is made at this stage to "any person" upon request. After the sale is consummated and the veteran moves into the residence, however, the forms at issue are cross-referenced and retrievable under the name of the veteran-purchaser, and the address obviously can be a personal identifier if the disclosure request is so framed.

Cir. 1983), on this point (see Pet. 12-13). In both *Rose* and *Arieff*, the courts permitted the redaction of *all* identifying personal information before requiring release of the remaining information.[4]

c. Petitioner also asserts (Pet. 14-16) that a conflict is presented as to whether the Exemption 6 balancing test is to be applied solely with reference to the individual requester, or with reference to unrestricted disclosure to the general public. There is, in fact, no such conflict.

First, the court of appeals did not apply or articulate "a blatantly unrestricted balancing test," as petitioner suggests (Pet. 15). Rather, the court focused directly on the particular public purposes and uses asserted by petitioner (Pet. App. 6a-7a). That was the significance of the court's conclusion that petitioner's investigation of racial steering would not be significantly enhanced by disclosure of the information (*id.* at 7a-8a). The court's recognition that realtors or lenders might seek to contact the veterans in connection with the same issues (*id.* at 8a) was purely an additional, not a determinative, factor.

Second, the one decision on which petitioner relies to show a conflict, *Getman* v. *NLRB*, 450 F.2d 670 (D.C. Cir. 1971), did not hold that the courts are required to apply "a more restricted test which measured only the effects of a

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[4]The information sought in *Arieff* was a list of prescription drugs and quantities. The requester expressly stipulated that any information that would identify the recipients of the drugs could be deleted. Nonetheless, the defendant resisted disclosure on the ground that it might be possible to connect a particular user with a particular drug because of the peculiar symptoms or uses involved. While recognizing that Exemption 6 protects against release of documents which "disclose information attributable to an individual" (712 F.2d at 1468), the court concluded that this "secondary effect" was insufficient to show an invasion of privacy. *Ibid.* Here, the home addresses, loan amounts, and lenders can immediately be identified as relating to particular homeowners.

disclosure [to the particular requesters involved]" (Pet. 15). The court merely suggested, in dictum, that it would not necessarily order disclosure to other requesters for other purposes. 450 F.2d at 677 n.24. A subsequent District of Columbia Circuit decision, *Ditlow* v. *Shultz*, 517 F.2d 166, 171, 173 (1975), makes clear that that court has not decided the issue petitioner attempts to raise. There is, therefore, no conflict for this Court to resolve on this point.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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